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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,544	02/07/2001	Andy Zupan	462	2538

7590 01/14/2003

Law Offices of John D. Gugliotta, PE., Esq.
202 Delaware Building
137 South Main Street
Akron, OH 44308

EXAMINER

PATEL, MITAL B

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 01/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/778,544

Applicant(s)

ZUPAN, ANDY

Examiner

Mital B. Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 29 October 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

Response to Amendment/Arguments

1. Applicant's arguments filed 10/29/02 have been fully considered but they are not persuasive.

2. The Examiner would like to clarify the 112-1st paragraph rejection as set forth in the previous office action. Although, the specification and drawings teach and disclose the various components of the valves, the disclosure is not enabled with respect to the sequence of events that occur when the activation button is depressed to fill the chamber up with the oxygen and nitrogen and how the seat member and ball are displaced during the dispensing of the oxygen and nitrogen. Based on the disclosure of the drawings and specification, there is no teaching of how the nitrogen and/or oxygen gets filled into chamber from the canister 20 and then in turn how the nitrogen and/or oxygen gets discharged with a constant volume. The Applicant contends that "a patent need not teach, and preferably omits, what is well known in the art." However, the specific elements with respect to their function of filling and discharging are not taught and omitted from the disclosure, and that is also the novelty or inventive concept for which the Applicant seeks protection i.e., those elements and/or functions that the Applicant deems to be omittable are critical and essential to the claimed invention. Therefore, it is unclear to the Examiner how that disclosure does not need to be taught or can be preferably omitted. Furthermore, Applicant states that in Figure 11, 'a ball 56 engages a hard metal seat 58'..."upon engagement with a hard surface creates a tangent or a meeting of a curved surface in a single point, thereby preventing 'sealable

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engagement' between the two, or more specifically between the ball 56 and seat 58".

However, upon examination of Figure 11, ball 56 and seat 58 are shown to be in a tight sealed engagement, which contradicts the recitation of "preventing a sealing seat from being achieved".

Specification

3. The following is a quotation of 37 CFR 1.71(a)-(c):

(a) The specification must include a written description of the invention or discovery and of the manner and process of making and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make and use the same.

(b) The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from other inventions and from what is old. It must describe completely a specific embodiment of the process, machine, manufacture, composition of matter or improvement invented, and must explain the mode of operation or principle whenever applicable. The best mode contemplated by the inventor of carrying out his invention must be set forth.

(c) In the case of an improvement, the specification must particularly point out the part or parts of the process, machine, manufacture, or composition of matter to which the improvement relates, and the description should be confined to the specific improvement and to such parts as necessarily cooperate with it or as may be necessary to a complete understanding or description of it.

The specification is objected to under 37 CFR 1.71 because the Applicant fails to provide adequate support in the disclosure for how the valve functions, specifically the sequence of events that occur when the activation button is depressed to fill the chamber up with the oxygen and nitrogen and how the seat member and ball are displaced during the dispensing of the oxygen and nitrogen. Furthermore, Applicant fails to provide adequate support as to how the hard metal seat prevents a sealing seat from being achieved. Finally, based on the disclosure of Figure 11, it appears that the valve arm, threaded shank 51, the seat member, ball and spring, and all the elements associated with the above noted elements are floating in the valve housing, i.e., there is

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no disclosure in the drawings of how these elements are structurally supported within the valve housing. One of skill in the art would not know how to make and/or use the invention without adequate support for how the constant volume discharge valve functions to dispense the oxygen and nitrogen.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 18-35 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

With respect to claim 18, the Applicant fails to provide adequate support in the disclosure for how the valve functions, specifically the sequence of events that occur when the activation button is depressed to fill the chamber up with the oxygen and nitrogen and how the seat member and ball are displaced during the dispensing of the oxygen and nitrogen. Furthermore, Applicant fails to provide adequate support as to how the hard metal seat prevents a sealing seat from being achieved. Finally, based on the disclosure of Figure 11, it appears that the valve arm, threaded shank 51, the seat member, ball and spring, and all the elements associated with the above noted elements are floating in the valve housing, i.e., there is no disclosure in the drawings of

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how these elements are structurally supported within the valve housing. One of skill in the art would not know how to make and/or use the invention without adequate support for how the constant volume discharge valve functions to dispense the oxygen and nitrogen.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mital B. Patel whose telephone number is 703-306-5444. The examiner can normally be reached on Monday-Friday (8:00 - 4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for

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the organization where this application or proceeding is assigned are 703-306-4520 for regular communications and 703-306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

mbp *HP*
January 8, 2003



WEILUN LO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700